

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1118

Introduced by Senator Figueroa

January 4, 2006

~~An act relating to health care insurance. An act to add Section 130500 to the Health and Safety Code, and to add Sections 6051.9, 6051.11, 6201.9, and 6201.11 to the Revenue and Taxation Code, relating to taxation, making an appropriate therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1118, as amended, Figueroa. ~~Health Care Insurance for All Children Act.~~ *Health Care Insurance for All Children Act: Sales and Use Tax Law: soda: food products: advertisements.*

The Sales and Use Tax Law imposes a tax on the sale of or the storage, use, or other consumption of, tangible personal property in this state at specified rates.

This bill would, in addition, impose a tax on the sale of or the storage, use, or other consumption of tangible personal property that is a carbonated beverage, as defined, in this state at a rate of 2%. This bill would also impose a tax on the sale of food products that are sold by specified retailers, as defined, that include drive-in restaurants, at a rate of 2%.

This bill would also impose an excise tax on the purchase, for use by an advertiser, of advertising space, as defined, in excess of an established amount, for food advertisements of food products of poor nutritional quality, as defined, to be aired within this state at the rate of ____ % of the annual gross receipts of any advertiser, as defined. This bill would require an advertiser to report annually to the State

Board of Equalization regarding the amount of advertising space purchased.

This bill would create the Children's Health Insurance Fund and require that all revenues, less refunds, derived from the above taxes be transferred to the fund. This bill would continuously appropriate all of the money in the fund to the State Department of Health Services for children's health care related to obesity, diabetes, and other conditions.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law establishes programs to provide health care benefits to children, including the Healthy Families Program and the Medi-Cal program.~~

~~This bill would express the Legislature's intent to enact legislation to provide access to affordable health care insurance to all uninsured children in California, and to provide a funding mechanism for that insurance.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *This act shall be cited as the Health Care*
2 *Insurance for All Children Act.*

3 SEC. 2. *The Legislature finds and declares all of the*
4 *following:*

5 (a) *The Surgeon General of the United States, in 2001, warned*
6 *that the nation was in the midst of an obesity epidemic.*

7 (b) *The state of health care for children in California is*
8 *threatened by obesity, type II diabetes, hypertension, heart*
9 *disease, cancer, and psychosocial problems.*

10 (c) *In a study requested by Congress and sponsored by the*
11 *United States Center for Disease Control, entitled "Food*
12 *Marketing to Children and Youth: Threat or Opportunity?", the*
13 *Institute of Medicine of the National Academies provides the*

1 *most comprehensive review to date of the scientific evidence on*
2 *the influence of food marketing on diets and diet-related health*
3 *of children and youth.*

4 *(d) The report concludes that current food and beverage*
5 *marketing practices put children's long-term health at risk and*
6 *that the number of children, in the United States, who are obese,*
7 *have diabetes, or both, is on the rise. Over the past three*
8 *decades, the obesity rate has more than doubled for preschool*
9 *children aged two to five years of age and adolescents aged 12 to*
10 *19 years of age. It has more than tripled for children aged six to*
11 *11 years of age. At present, approximately 9,000,000 children*
12 *over six years of age are considered obese and another 15*
13 *percent are at risk for becoming obese. Type II diabetes in*
14 *children has more than doubled in the past decade.*

15 *(e) Further, a recent report released by Consumers Union and*
16 *California Pan-Ethic Health Network concluded that 31 percent*
17 *of children in the United States, aged six to 19 years of age, are*
18 *considered overweight or are risk of being overweight and that*
19 *overweight adolescents have a 70 percent chance of becoming*
20 *overweight or obese adults. This report also states that this*
21 *generation of children is the first to have an estimated shorter*
22 *life span than that of their parents due to obesity-related*
23 *problems. The Consumers Union and California Pan-Ethic*
24 *Health Network report also found that increased calories*
25 *consumed by Americans can be attributed to foods high in fat,*
26 *sugar, and salt.*

27 *The report also finds that California has one of the fastest rates*
28 *of increase in adult obesity of any state in the nation, with an*
29 *obesity rate of the adult population doubling between 1991 and*
30 *2001. In California, in 2004, 28.1 percent of children enrolled in*
31 *grades 5, 7, and 9 were overweight and the prevalence of obesity*
32 *among California children in grades 5, 7, and 9 is the highest*
33 *among Pacific Islanders at 35.9 percent, Latinos at 35.4 percent,*
34 *American Indians and Alaskan Natives at 31.7 percent, and*
35 *African-Americans at 28.7 percent.*

36 *In the report, the Consumers Union and California Pan-Ethic*
37 *Health Network find that, nationwide, the food, beverage, candy,*
38 *and restaurant industry advertising expenditures in 2004 totaled*
39 *eleven billion two hundred sixty million dollars*
40 *(\$11,260,000,000) versus the nine million five hundred fifty*

1 thousand dollars (\$9,550,000) spent to promote healthy eating
2 habits. Additionally, food is the most frequently advertised
3 product category, at 50 percent, on children's television. The
4 foods promoted during the hours when children watch television
5 are predominately high in sugar and fat or are foods of poor
6 nutritional quality, with almost no references to fruits and
7 vegetables.

8 Finally, the costs of obesity and the overweight epidemic to the
9 health care system was eight billion four hundred million dollars
10 (\$8,400,000,000) for California, with nearly one-half of the
11 expenditures financed by Medicare and Medi-Cal.

12 (f) Additional studies have found that children view an
13 average of 40,000 food commercials, mostly for foods high in
14 calories, fat, sugar, and salt, each year. Children watch an
15 average of one food commercial every five minutes of television
16 viewing time, and as many as three hours of food commercials
17 each week.

18 (g) Soft drinks now comprise the leading source of added
19 sugar in a child's diet. The current high intake of calorically
20 sweetened beverages contributes to the excess caloric intake and
21 is a factor underlying the development of obesity in the United
22 States. Each additional daily serving of sugar-sweetened soda
23 increases a child's risk for obesity by 60 percent.

24 (h) It is estimated that there are approximately 800,000
25 children in California who are uninsured. Of these,
26 approximately 400,000 children currently qualify for state health
27 insurance through the Healthy Families Program or Medi-Cal.
28 Recent legislation addressing the need to provide all children in
29 California with health insurance was vetoed by the Governor
30 because the legislation failed to specify how the state would pay
31 for an additional "half billion dollars a year without providing a
32 funding source at a time when California has a \$7.5 billion
33 structural deficit."

34 (i) The state of health care for children in California is
35 threatened by increases in obesity and type II diabetes.

36 (j) In light of the need to address the additional costs to the
37 state to provide all children with health care insurance, the
38 Legislature creates the Children's Health Insurance Fund.

39 SEC. 3. Section 130500 is added to the Health and Safety
40 Code, to read:

1 130500. *The Children's Health Insurance Fund is hereby*
2 *established in the State Treasury. Notwithstanding Section 13340*
3 *of the Government Code, all moneys in the fund are hereby*
4 *continuously appropriated, without regard to fiscal year, to the*
5 *State Department of Health Services for children's health care*
6 *related to obesity, diabetes, and other conditions.*

7 SEC. 4. *Section 6051.9 is added to the Revenue and Taxation*
8 *Code, to read:*

9 6051.9. (a) (1) *In addition to any other taxes imposed by this*
10 *part for the privilege of selling tangible personal property at*
11 *retail, a tax is hereby imposed upon all retailers at the rate of 2*
12 *percent of the gross receipts from the sale of qualified tangible*
13 *personal property sold at retail in the state.*

14 (2) *For purposes of this section, "qualified tangible personal*
15 *property" means any carbonated beverage, including, but not*
16 *limited to, semifrozen beverages containing carbonation and*
17 *carbonated beverages that use fruit juice that includes a*
18 *preservative, like benzoate, or any other additive. "Qualified*
19 *tangible personal property" does not mean carbonated beverage*
20 *products that are 100 percent natural fruit juice without any*
21 *preservatives or additives.*

22 (b) *Notwithstanding any other provision of this part, all*
23 *revenues, less refunds, derived from the 2 percent tax imposed*
24 *pursuant to this section shall be transferred to the Children's*
25 *Health Insurance Fund created by Section 103500 of the Health*
26 *and Safety Code.*

27 SEC. 5. *Section 6051.11 is added to the Revenue and*
28 *Taxation Code, to read:*

29 6051.11. (a) *In addition to any other taxes imposed by this*
30 *part, for the privilege of selling tangible personal property at*
31 *retail a tax is hereby imposed upon all qualified retailers at the*
32 *rate of 2 percent of the gross receipts from the sale of all*
33 *qualified tangible personal property sold at retail in the state.*

34 (b) *For purposes of this section, the following definitions*
35 *apply:*

36 (1) *"Qualified retailer" means a retailer that operates an*
37 *establishment from which food products are ordinarily sold for*
38 *immediate consumption on or near a location at which parking*
39 *facilities are provided primarily for the use of patrons in*
40 *consuming the products purchased at a drive-in establishment,*

1 even though the food products are sold on a take-out or to go
2 order and are actually packaged or wrapped and taken from the
3 premises of the establishment.

4 (2) “Qualified tangible personal property” means all food
5 products sold by a qualified retailer, including food products
6 sold during a to go or take-out order.

7 (c) Notwithstanding any other provision of this part, all
8 revenues, less refunds, derived from the 2 percent tax imposed
9 pursuant to this section shall be transferred to the Children’s
10 Health Insurance Fund created by Section 103500 of the Health
11 and Safety Code.

12 SEC. 6. Section 6201.9 is added to the Revenue and Taxation
13 Code, to read:

14 6201.9. (a) (1) In addition to the taxes imposed by any other
15 provision of this part, an excise tax is hereby imposed on the
16 storage use, or other consumption in this state of qualified
17 tangible personal property purchased from any retailer for
18 storage, use, or other consumption in this state at the rate of 2
19 percent of the sales price of the property.

20 (2) For purposes of this section, “qualified tangible personal
21 property” means any carbonated beverage, including, but not
22 limited to, semifrozen beverages containing carbonation and
23 carbonated beverages that use fruit juice that includes a
24 preservative, like benzoate, or any other additive. “Tangible
25 personal property” does not mean carbonated beverage products
26 that are 100 percent natural fruit juice without any preservatives
27 or additives.

28 (b) Notwithstanding any other provision of this part, all
29 revenues, less refunds, derived from the 2 percent tax imposed
30 pursuant to this section shall be transferred to the Children’s
31 Health Insurance Fund created by Section 103500 of the Health
32 and Safety Code.

33 SEC. 7. Section 6201.11 is added to the Revenue and
34 Taxation Code, to read:

35 6201.11. (a) An excise tax is hereby imposed on the
36 purchase, for use by an advertiser, of advertising space for food
37 advertisements to be aired within this state at the rate of ____
38 percent of the annual gross receipts of any advertiser.

39 (b) For purposes of this section, the following definitions
40 apply:

1 (1) “Advertiser” means a franchise or company that
2 purchases advertising space to air a food advertisement.

3 (2) “Advertising space” means airtime during a television
4 transmission in California used to air a food advertisement
5 between the hours of 7 a.m. to 10 p.m. or during child-specific
6 programming in excess of ____ minutes per month.

7 (3) “Food advertisement” means a commercial for a food of
8 poor nutritional quality.

9 (4) (A) “Food of poor nutritional quality” means a food
10 product that meets one or more of the following criteria:

11 (i) Thirty-five percent of the total calories of the food product
12 come from fat, excluding nuts, seeds, and peanut or other nut
13 butters.

14 (ii) Ten percent of the total calories of the food product come
15 from saturated and trans fat.

16 (iii) Thirty-five percent of the total sugars of the food product
17 are added by weight.

18 (iv) The food product contains 230 milligrams of sodium per
19 serving if it is chips, crackers, cheeses, baked goods, french fries,
20 or other snacks, 480 milligrams of sodium per serving if it is
21 cereal, soup, pasta, or meat, 600 milligrams per serving if it is
22 pizza, sandwiches, or a main dish, or 770 milligrams of sodium
23 per serving if it is a meal.

24 (B) A “food of poor nutritional quality” that meets one or
25 more of the criteria identified in clauses (i) to (iv) of
26 subparagraph (A) shall not contain any of the following:

27 (i) Ten percent of the daily value of vitamins A or C, calcium,
28 iron, or fiber.

29 (ii) One-half a serving of fruits or vegetables.

30 (iii) Fifty-one percent or more, by weight, whole grain
31 ingredients.

32 (C) A “food product of poor nutritional quality” that meets
33 one or more of the criteria identified in clauses (i) to (iv) of
34 subparagraph (A) and does not contain any of the criteria
35 identified in clauses (i) to (iii) of subparagraph (B) for individual
36 foods and beverages, except fruits and vegetables, shall be a
37 portion size that is more than the standard serving size used for
38 nutritional facts labels or, for meals, shall be a portion size that
39 is more than one-third of the daily calorie requirement for the
40 target audience.

1 (D) A “food product of poor nutritional quality” includes
2 beverages that are soft drinks, sports drinks, sweetened iced teas,
3 fruit based drinks with less than 50 percent real fruit juice or that
4 contain added sweeteners, beverages containing caffeine but not
5 low-fat or fat-free chocolate milk, and whole or 2 percent milk.

6 (c) An advertiser shall send an report annually, in the form
7 and manner prescribed by the board, to the board regarding the
8 amount of advertising space purchased by the advertiser.

9 (d) The board shall prescribe rules and regulations necessary
10 to implement this section.

11 SEC. 8. This act is an urgency statute necessary for the
12 immediate preservation of the public peace, health, or safety
13 within the meaning of Article IV of the Constitution and shall go
14 into immediate effect. The facts constituting the necessity are:

15 In order to address the current health care crisis and to
16 provide health care to this state’s children it is necessary that
17 this act take effect immediately.

18 ~~SECTION 1. It is the Legislature’s intent to create a funding~~
19 ~~mechanism for health care insurance for all California children.~~

20 ~~SEC. 2. This act shall be cited as the Health Care Insurance~~
21 ~~for All Children Act.~~

22 ~~SEC. 3. The Legislature finds and declares all of the~~
23 ~~following:~~

24 ~~(a) For the economic and social benefit of all residents of the~~
25 ~~state, it is important to enable all children of this state to access~~
26 ~~affordable health insurance that offers comprehensive coverage~~
27 ~~and emphasizes preventive health care.~~

28 ~~(b) Many children in working families, including many~~
29 ~~families whose family income ranges between forty thousand~~
30 ~~dollars (\$40,000) and eighty thousand dollars (\$80,000), are~~
31 ~~uninsured.~~

32 ~~(c) Approximately 800,000 children in California are~~
33 ~~uninsured.~~

34 ~~(d) Numerous studies, including the Institute of Medicine’s~~
35 ~~report, “Coverage Matters: Insurance and Health Care,”~~
36 ~~demonstrate that lack of insurance negatively affects health~~
37 ~~status.~~

38 ~~(e) Access to health care is a key component for a child’s~~
39 ~~healthy development and successful education.~~

1 ~~(f) The effects of lack of insurance also negatively impact~~
2 ~~those who are insured because the cost of paying for care for the~~
3 ~~uninsured is often shifted to those who have insurance in the~~
4 ~~form of higher health insurance premiums.~~

5 ~~(g) It is therefore the Legislature's intent to enact legislation to~~
6 ~~provide access to affordable health insurance to all uninsured~~
7 ~~children in California.~~

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